

**Executive Summary – Enforcement Matter – Case No. 37835**

**City of Follett**

**RN101916559**

**Docket No. 2011-0616-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Indifference to legal duty based on violation of a previous order.

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of Follett WWTP, located approximately one mile north of State Highway 15 and approximately one mile west of Farm-to-Market Road 1454, Lipscomb County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 10, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$24,640

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$24,640

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 37835**

**City of Follett**

**RN101916559**

**Docket No. 2011-0616-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** March 25, 2011

**Date(s) of NOE(s):** April 2, 2011

***Violation Information***

Failed to maintain authorization for the discharge of wastewater [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2), TEX. WATER CODE § 26.121(a)(1), and TCEQ Agreed Order Docket No. 2009-0961-MWD-E, Ordering Provision No. 2.b.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to:

a. Immediately, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired Texas Pollutant Discharge Elimination System Permit No. WQ0010508001;

b. Within 30 days, submit an administratively complete permit application;

c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;

d. Within 45 days, submit written certification of compliance with Ordering Provision b.; and

e. Within 330 days, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 37835**  
**City of Follett**  
**RN101916559**  
**Docket No. 2011-0616-MWD-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Lanae Foard, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable Kevin Wynn, Mayor, City of Follett, P. O. Box 216,  
Follett, Texas 79034

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	28-Mar-2011	<b>PCW</b>	11-Apr-2011	<b>Screening</b>	6-Apr-2011	<b>EPA Due</b>	
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## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Follett		
<b>Reg. Ent. Ref. No.</b>	RN101916559		
<b>Facility/Site Region</b>	1-Amarillo	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37835	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0616-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Lanae Foard
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$14,000**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **76.0%** Enhancement **Subtotals 2, 3, & 7** **\$10,640**

Notes: Enhancement for 15 months of self-reported effluent violations, three NOV's with dissimilar violations, and two agreed orders with denial of liability.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts **\$1,244**  
Approx. Cost of Compliance **\$10,000**

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$24,640**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$24,640**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$24,640**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$24,640**

Screening Date 6-Apr-2011

Docket No. 2011-0616-MWD-E

PCW

Respondent City of Follett

Policy Revision 2 (September 2002)

Case ID No. 37835

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101916559

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	18	36%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 76%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

## Compliance History Notes

Enhancement for 15 months of self-reported effluent violations, three NOVs with dissimilar violations, and two agreed orders with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 76%

Screening Date 6-Apr-2011

Docket No. 2011-0616-MWD-E

PCW

Respondent City of Follett

Policy Revision 2 (September 2002)

Case ID No. 37835

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101916559

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.65 and 305.125(2), Tex. Water Code § 26.121(a)(1), and Texas Commission on Environmental Quality ("TCEQ") Agreed Order Docket No. 2009-0961-MWD-E, Ordering Provision No. 2.b

Violation Description Failed to maintain authorization for the discharge of wastewater, as documented during a record review conducted on March 25, 2011. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System Permit No. WQ0010508001, which expired on May 1, 2009, and is continuing to discharge wastewater from the Facility without authorization.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 14 425 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$14,000

Fourteen monthly events are recommended from the effective date of TCEQ Agreed Order Docket No. 2009-0961-MWD-E (February 7, 2010) to the screening date (April 6, 2011).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$14,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,244

Violation Final Penalty Total \$24,640

This violation Final Assessed Penalty (adjusted for limits) \$24,640

# Economic Benefit Worksheet

**Respondent** City of Follett  
**Case ID No.** 37835  
**Reg. Ent. Reference No.** RN101916559  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$10,000	7-Feb-2010	3-Aug-2012	2.49	\$1,244	n/a	\$1,244
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a new permit application to obtain authorization to discharge wastewater. Date required is the effective date of TCEQ Agreed Order Docket No. 2009-0961-MWD-E. Final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$1,244



# Compliance History

Customer/Respondent/Owner-Operator: CN600737811 City Of Follett Classification: AVERAGE Rating: 6.32

Regulated Entity: RN101916559 CITY OF FOLLETT WWTP Classification: AVERAGE Site Rating: 6.32

ID Number(s): WASTEWATER EPA ID TX0066796

WASTEWATER LICENSING LICENSE WQ0010508001

Location: Approximately one mile north of State Highway 15 and approximately one mile west of Farm-to-Market Road 1454 in Lipscomb County, Texas

TCEQ Region: REGION 01 - AMARILLO

Date Compliance History Prepared: April 05, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 05, 2006 to April 05, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lanae Foard Phone: (512) 239-2554

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 01/12/2008 ADMINORDER 2003-1241-MWD-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: TPDES 10508-001 PERMIT

Description: Failure to notify TCEQ of a 40% noncomplaine of effluent limits.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: TPDES 10508-001 PERMIT

Description: Failure by facility to maintain effluent levels within permitted limits. See attached Table 1.

Effective Date: 02/07/2010 ADMINORDER 2009-0961-MWD-E

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter D 305.65

30 TAC Chapter 305, SubChapter F 305.125(2)

TWC Chapter 26 26.121

Rqmt Prov: Permit Conditions, 4,c.pg. 8 PERMIT

Description: Failed to renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010508001 before expiration and is continuing to operate, as documented during a record review conducted on June 9, 2009.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	06/24/2006	(460321)
2	04/24/2006	(502314)
3	07/17/2007	(563623)
4	06/12/2007	(583483)
5	06/12/2007	(583484)
6	06/12/2007	(583485)
7	06/12/2007	(583486)
8	06/12/2007	(583487)
9	02/13/2007	(583488)
10	02/13/2007	(583489)
11	07/30/2007	(603954)
12	11/10/2006	(603955)
13	08/27/2007	(603956)
14	11/12/2006	(603957)
15	11/10/2006	(603958)
16	11/12/2006	(603959)
17	02/20/2008	(619194)
18	10/25/2007	(622790)
19	10/25/2007	(622791)
20	11/07/2007	(622792)
21	04/25/2008	(653808)
22	01/21/2008	(674279)
23	01/21/2008	(674280)
24	01/05/2009	(729756)
25	01/05/2009	(729757)
26	01/05/2009	(729758)
27	01/05/2009	(729759)
28	01/05/2009	(729760)

29 01/05/2009 (729761)

30 01/05/2009 (729762)

31 01/05/2009 (729763)

32 01/05/2009 (729764)

33 01/05/2009 (729765)

34 01/05/2009 (729766)

35 01/05/2009 (729767)

36 03/10/2009 (736351)

37 06/15/2009 (748864)

38 09/02/2009 (765774)

39 04/13/2010 (796636)

40 06/22/2009 (811452)

41 06/22/2009 (811453)

42 06/22/2009 (811454)

43 06/21/2010 (824400)

44 11/01/2010 (871543)

45 03/25/2011 (892822)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/31/2006	(603955)	CN600737811	
Self Report?	YES		Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	09/30/2006	(603958)	CN600737811	
Self Report?	YES		Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	11/30/2006	(583488)	CN600737811	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2007	(583484)	CN600737811	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	04/30/2007	(583486)	CN600737811	

Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2007 (603954)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/18/2007 (563623)	CN600737811	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Monitoring & Reporting Requirements PERMIT		
Description:	Partial failure by the facility to report noncompliance of greater than 40%. The facility reported all such noncompliances for the past year in one report, therefore, not reporting each occurrence within the permitted timeframe.		
Date:	07/31/2007 (603956)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2007 (622790)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	09/30/2007 (622791)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2007 (674279)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/29/2008 (729757)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/30/2008 (729759)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008 (729761)	CN600737811	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2008 (729764) CN600737811

Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2009 (811452) CN600737811

Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 04/13/2010 (796636) CN600737811

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Page 2, No. 1 PERMIT

Description: Failure by the facility to maintain effluent Fecal Coliform Bacteria within permit limits.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Page 6, No. 7 (c) PERMIT

Description: Failure by the facility to report Fecal Coliform exceedences in excess of 40% of the permitted limit.

Date: 06/03/2010 (824400) CN600737811

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TPDES 10508-001 PERMIT

Description: Failure to notify TCEQ of a 40% noncompliance of effluent limits.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF FOLLETT  
RN101916559**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0616-MWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Follett ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **I. FINDINGS OF FACT**

1. The Respondent owns and operates a wastewater treatment facility located approximately one mile north of State Highway 15 and approximately one mile west of Farm-to-Market Road 1454 in Lipscomb County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on March 25, 2011, TCEQ staff documented that the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010508001, which expired on May 1, 2009, and is continuing to discharge wastewater from the Facility without authorization.
4. The Respondent received notice of the violations on April 7, 2011.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2), TEX. WATER CODE § 26.121(a)(1), and TCEQ Agreed Order Docket No. 2009-0961-MWD-E, Ordering Provision No. 2.b.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Twenty-Four Thousand Six Hundred Forty Dollars (\$24,640) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Twenty-Four Thousand Six Hundred Forty Dollar (\$24,640) administrative penalty.

## **III. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Twenty-Four Thousand Six Hundred Forty Dollars (\$24,640) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are



not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Follett, Docket No. 2011-0616-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. WQ0010508001;
- b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Application Review and Processing Team  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.b, in accordance with Ordering Provision No. 2.f below;
- e. Within 330 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.f below;
- f. The certifications required by Ordering Provision Nos. 2.d and 2.e shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certifications shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in

accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Amarillo Regional Office  
Texas Commission on Environmental Quality  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*Ramon Zana*  
For the Executive Director

5/20/13  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Follett. I am authorized to agree to the attached Agreed Order on behalf of the City of Follett, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Follett waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Kevin Wynn*  
Signature

3-13-2013  
Date

Kevin Wynn  
Name (Printed or typed)  
Authorized Representative of  
City of Follett

Mayor  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.